



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/740,030	12/18/2003	Michael J. Rojas	17188	1731

23389 7590 03/06/2008
SCULLY SCOTT MURPHY & PRESSER, PC
400 GARDEN CITY PLAZA
SUITE 300
GARDEN CITY, NY 11530

EXAMINER

SMITH, CREIGHTON H

ART UNIT	PAPER NUMBER
----------	--------------

2614

MAIL DATE	DELIVERY MODE
-----------	---------------

03/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/740,030

Applicant(s)

ROJAS, MICHAEL J.

Examiner

Creighton H. Smith

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-20, 22-35, 37-45, 47-57, 59-69 and 71-76 is/are pending in the application.
- 4a) Of the above claim(s) 6, 21, 36, 46, 58, 70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-5, 7-20, 22-35, 37-45, 47-57, 59-69, 71-76 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

Art Unit: 2614

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 11-18, 26-29, 43, 45, 51-54, 65, 66 rejected under 35 U.S.C.

103(a) as being unpatentable over McZeal in view of Barry, U.S. Pat. App. Pub.

#2007/0174403.

McZeal discloses in col. 4, lines 18 et seq. that until his invention there was no device which would take full advantage of the Internet and instant messaging for voice quality purposes, and which uses computer data networks for voice.

In col. 28, lines 5 et seq., McZeal discloses that his invention provides customers with instant voice messaging which uses Voice over Internet Protocol (VoIP). In col. 16, lines 39 et seq., McZeal discloses that his invention can use both the Internet and the PSTN. Barry discloses in [0031] that instant messages/IM are stored in server 150. To have provided Barry's teaching of an IM server, that will store the IM until a user is ready to retrieve them, in McZeal's communication system would have been obvious to a person having ordinary skill in the art, because the skilled practitioner in this communications art would realize the need to store messages if the called party lacked the present ability to receive the IM.

For claims 2 & 3, McZeal discloses in cols. 1 & 16, lines 42-43 & 25-30 that his invention can be used in local or wide area networks, i.e., LAN/WAN.

Regarding claim 11, see McZeal @ col. 16, lines 42 & 59-60.

Pertaining to claim 30, with McZeal's disclosure that his device can be used in either a WAN (internet) or LAN (local area network). If the voice message is to be routed out beyond a LAN, then an external serving system will be employed until the message reaches the recipient inside of the LAN, whereupon the LAN and its associated server will route the message to the intended recipient.

Claims 4, 19, 20, 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over McZeal in view of Barry, U.S. Pat. App. Pub. #2007/0174403 and Williams et al.

Williams et al disclose in ¶1-0055 that a messaging server (105) will save a voice message and send a list of recipients to the user from an address book. To have provided Williams teaching of a server providing a user a calling list of recipients in McZeal's Instant Voice Messaging server system would have been obvious to a person having ordinary skill in the art, because the skilled practitioner in the communications and server arts will readily realize that there are an unlimited amount of commands and information that a server can hold which can be communicated to anyone throughout the world that has the proper equipment.

Claims 7, 22, 47, are rejected under 35 U.S.C. 103(a) as being unpatentable over McZeal in view of Barry, U.S. Pat. App. Pub. #2007/0174403 and to Sagi et al.

Sagi et al disclose in claim 24 where a server will receive an audio file from a subscriber, and then in claim 29 Sagi et al disclose that the transmission is sent to a second subscriber. To have similarly used Sagi et al disclosure of transmitting an audio file to a server in McZeal's device would have been obvious to a person having ordinary skill in the art, because the skilled practitioner in the communications art will realize that

Art Unit: 2614

the sending party can either directly record a voice message or send an audio file.

Either way, a called party will receive the voice message.

Claims 8, 23, 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over McZeal in view of Barry, U.S. Pat. App. Pub. #2007/0174403 and Goodman et al.

Goodman et al disclose in ¶-0033 that an audio message can be transformed from any of encrypted, decrypted, compressed, or decompressed format. To have similarly provided Goodman's teaching of encrypting, decrypting, compressing, and decompressing audio into McZeal's device would have been obvious to a person having ordinary skill in the art, because by compressing the audio will take up less memory in the server.

Claims 9, 24, 49, are rejected under 35 U.S.C. 103(a) as being unpatentable over McZeal in view of Barry, U.S. Pat. App. Pub. #2007/01774403 and Gierachf.

Gierachf discloses in ¶-0044 in Step 266 that the audio data, or voice message, is sent to an audio buffer 19B'. To have similarly used Gierachf method of buffering the audio data in McZeal's device would have been obvious to a person having ordinary skill in the art.

Claims 10, 25, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over McZeal in view of Barry, U.S. Pat. App. Pub. #2007/0174403 and Hollowell et al.

Hollowell et al teach in ¶-0031 attaching an email message to an audio message. To have provided this teaching in McZeal would have been obvious to a person having ordinary skill in the art because the skilled practitioner in this communications art will realize the efficiency of alerting a multitude of persons located throughout the world that

Art Unit: 2614

an email from the sender is being sent to the recipients, such as the minutes of an important meeting.

Claims 30-33, 35, 41, 55, 57, 63, 64, 67, 69, 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over McZeal in view of Barry, U.S. Pat. App. Pub. 32007/0174403 and Monroe.

Monroe discloses in col. 20, lines 28 et seq. and in Fig. 9 a local server (460) connected to a LAN, which provides a gateway to a wide area network like the Internet. In col. 32, lines 11 et seq. Monroe discloses that pre-recorded voice messages can be delivered to a modem and then delivered throughout the Network. To have used Monroe's teaching of connecting a local server to an Internet server into McZeal's device would have been obvious to a person having ordinary skill in the art because a local server will only reach a few, select individuals in close proximity to each other, whereas the Internet will have global reach, thus insuring connectivity to clients worldwide.

Claims 42 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over McZeal in view of Barry and Monroe as applied to claim 30 above, and further in view of Boukobza, U.S. Pat. App. Pub. #2006/0167883.

Boukobza's method as disclosed in [0020] and claim 14 is for load balancing databases within a network having a plurality of servers. To have provided Boukobza's method of load balancing servers in Monroe as applied to McZeal would have been obvious to a person having ordinary skill in the art, because the skilled practitioner would realize that as one server becomes filled with IM, or as one server is being

Art Unit: 2614

inundated with high traffic volume, it would be necessary to route some of those IM to another server for storing.

Claims 34, 56, 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over McZeal in view of Barry and Monroe as applied to claim 30 above, and further in view of Williams et al.

Claims 37, 59, 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over McZeal in view of Barry and Monroe as applied to claim 30 above, and further in view of Sagi et al.

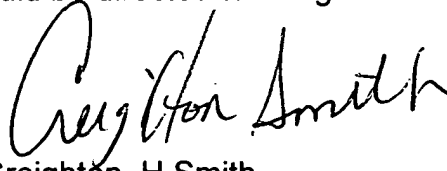
Claims 38, 60, 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over McZeal in view of Barry and Monroe as applied to claim 30 above, and further in view of Goodman et al.

Claims 39, 61, 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over McZeal, Jr. in view of Barry and Monroe as applied to claim 30 above, and further in view of Gierachf.

Claims 40, 62, 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over McZeal, jr. in view of Barry and Monroe as applied to claim 30 above, and further in view of Hollowell et al.

Any inquiry concerning this communication should be directed to Creighton H. Smith at telephone number 571/272-7546.

02 MAR '08


Creighton H Smith
Primary Examiner
Art Unit 2614